

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK B. HARRIS,

Plaintiff,

v.

JOSEPH LEHMAN,

Defendant.

Case No. C05-5379RBL

ORDER ADOPTING
REPORT AND
RECOMMENDATION

The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley Arnold, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and ORDER:

- (1) Plaintiff's Appeal [Dkt. #31] of the Magistrate Judge's Order Denying Motions to Extend Discovery and Strike Defendant's Motion for Summary Judgment [Dkt. #30] is **DENIED**.
- (2) The Court adopts the Report and Recommendation;
- (3) This action is **DISMISSED WITH PREJUDICE**. The plaintiff may not proceed with this action until and unless he receives relief in Habeas Corpus. Heck v. Humphrey, 114 S.Ct. 2364, 2373 (1994). Further, plaintiff is no longer in custody and cannot seek Habeas relief, thus, he is bared from proceeding with this action. Guerrero v. Gates, 442 F.3d (9th Cir. 2006).
- (4) The clerk is directed to send copies of this Order to plaintiff, counsel for defendant, and to the Hon. J. Kelley Arnold.

DATED this 16th day of October, 2006.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE